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TOPICS: An opinion column discusses federal sentencing guidelines. To learn more:

► ONLINE:

U.S. Sentencing Commission: www.ussc.gov/
Families Against Mandatory Minimums: www.famm.org/si_race_and_mandatory.htm



► BOOKS:

"Fear of Judging: Sentencing Guidelines in the Federal Courts" by Kate Stith, Jose A. Cabranes

Fix sentencing guidelines

Move to end disparity along racial lines hasn't worked

By **JOHN LEWIS**
and **ROBERT WILKINS**

Any day now, the U.S. Supreme Court is expected to announce its decision in the Booker and FanFan cases, which raise the issue of whether the federal sentencing guidelines violate the Sixth Amendment right to have a jury determine those facts that can increase the length of any potential sentence.

Many are hoping that the Supreme Court will strike down the guidelines, which have been lambasted by a diverse group of judges, practitioners and academics. Others are urging the court to uphold the guidelines, and they are preparing quick legislative "fixes" that would allow Congress to keep the present guidelines largely intact should the court strike them down.

Before the enactment of the guidelines, federal judges could consider a broad range of evidence and impose the sentence they believed most appropriate in each case. When Congress created the U.S. Sentencing Commission in 1984, its principal (and laudable) goal was to draft guidelines that eliminated discriminatory sentencing disparities. This approach initially appealed to minority communities because of its promise to sentence everyone fairly.

However, the guidelines, along with mandatory minimum drug sentences enacted by Congress since 1984, have been roundly criticized as unduly harsh, unduly rigid, removing too much discretion from judges and shifting too much power to prosecutors. The prestigious American College of Trial Lawyers (a group that includes several prominent former federal prosecutors) recently urged Congress to abolish the current guidelines, calling them "an experiment that has failed."

Indeed, several federal judges have resigned, in whole or in part because of their disgust with the guidelines. The latest was Judge Robert Cindrich of Pittsburgh, who said last February, "When the law provides a result that is repugnant, we must still follow the law. . . . And you can only do that so many



File

Kemba Smith, a first offender who was connected with a crack cocaine ring only through her abusive boyfriend, received a 24-year federal sentence. She was granted clemency by President Bill Clinton.



U.S. Rep. John Lewis (left) is a Democrat representing Atlanta. Robert Wilkins is a Washington attorney.

times before you start to wonder, 'How many more times am I going to put my name on this sentence that I don't believe in?'"

One such example of unjust sentencing is Kemba Smith. Smith was a first offender who never used, sold or handled drugs and was connected with a crack cocaine ring only through actions done at the behest of her abusive boyfriend. Nonetheless Smith received a 24-year federal sentence, and she won release from prison after six years only because of intense media coverage and a grant of clemency from President Bill Clinton. Most defendants like Smith are not so lucky.

Unfortunately, rather than

reducing unfair racial disparities in federal sentencing, the evidence shows that the guidelines made the problem worse. Just before Thanksgiving, the Sentencing Commission released a report assessing whether the federal sentencing system has achieved the goals of the 1984 reforms. It confirmed what many observers have long known: In the past 20 years, the federal prison population has gotten significantly darker.

The report also shows that while the average federal prison sentence for black offenders was about five months longer than for whites in 1984, by 2001, the average sentence for blacks was almost 30 months longer. According to the

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report, at least some of the disparity is because of controversial mandatory minimum drug sentences and guidelines that require powder cocaine defendants (a racially varied group) to traffic 100 times more cocaine before they receive the same sentence as crack cocaine defendants (who are predominantly black).

The report should serve as a catalyst for major discussion about the racial impact of federal sentencing policy, though, to date, it has received scant attention. Of

course, data showing vast racial disparities do not necessarily prove that the federal sentencing system discriminates.

But a critical goal of the federal sentencing guidelines was to eliminate unfair racial disparities in sentencing, and the Sentencing Commission has now concluded that "the sentencing guidelines and mandatory minimum statutes have a greater adverse impact on black offenders than did the factors taken into account by judges in the discretionary system in place immediately prior to guidelines implementation."

Racial disparity in incarceration has been a moral blight on America from the beginning days of our criminal justice system. That this disparity continues despite (and indeed because of) the guidelines highlights the need for serious thinking and action on the issue.

Regardless of whether the Supreme Court strikes them down in the Booker and FanFan cases, Congress should repeal the federal sentencing guidelines along with the mandatory minimum drug sentences. Then, Congress should allow the Sentencing Commission to draft new guidelines that treat the minority community fairly. The experiment with the federal sentencing guidelines has failed — it's time to go back to the drawing board.

► Washington attorney **Karl Racine** contributed to this column.

Perdue says one thing, does another

In politics, it's easy to talk a good game. If you're in a high-level position such as governor or senator, they practically hand you a script, which is why so many of them sound so much alike.

Consider our own Gov. Sonny Perdue, who like many governors these days is confronted by an ongoing budget crisis.

"Less revenue plus more demand for state services equals . . . hard choices," Perdue told legislators in his State of the State address last January. "There is a name for the kind of people who make hard choices. They are called 'leaders.' . . . Let's align our spending with our priorities and our priorities with our principles."



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MY OPINION

In addition to that fine talk on the budget, Perdue also talks the standard 21st century lingo about "positioning Georgia in the global marketplace" and making Georgia "even more competitive in the global economy." He talks about education, science and economic development, just as the script says he should.

But as we'll see, such talk is pretty much meaningless.

Today, the state Department of Education employs just two people, statewide, to help the more than 2,000 public schools in Georgia implement the state's science curriculum.

According to DOE spokesman Kirk Englehardt, the department has two positions, statewide, to assist with the math curriculum, kindergarten through high school. It employs two specialists in language arts, three in reading and two in social studies.

Meanwhile, the DOE has 30 positions devoted to help coordinate and support agriculture education, a field taught in 10 percent of Georgia public schools and fewer than half of Georgia high schools.

And yes, you read those numbers right: Two for science, two for math, three for reading.

Thirty for agriculture education.

To Kathy Cox, the state superintendent of schools, that disparity represented an opportunity. With the launch of a new, more ambitious statewide science curriculum, and with almost 30 percent of Georgia high school juniors already failing a mandated science graduation test, Cox recognized that Georgia science teachers and students need a lot of help. And with the state's budget difficulties, she knew that new resources for such an effort would have to come from within her own budget.

The solution she proposed was emi-